

GENERAL TERMS AND CONDITIONS REVISED 11/3/04

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the Washington State Parks and Recreation Commission, a state government agency.
- B. "Agent" shall mean the Director, Washington State Parks and Recreation Commission and/or a staff authorized to act on the Director's behalf.
- C. "Contractor" shall mean the company and/or authorized individuals who will be providing and/or performing services under this contract.

CONTRACTOR NOT EMPLOYEE OF THE AGENCY -- The Contractor performing under this contract is not an employee or agent of the Agency. The Contractor will not hold himself out as nor claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable amount of time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

COMPLIANCE WITH ENVIRONMENTAL LEGISLATION -- The Contractor shall obtain any and all environmental permits required, such as shoreline management, hydraulics project approval, forest practices, etc., and all conditions of such permits shall be followed by the Contractor.

PERMISSION OR RIGHT TO GO UPON PROPERTY OF ANOTHER -- The Contractor shall be solely responsible for obtaining any and all necessary land use agreements, permits, licenses, or easements from those agencies, organizations or individuals upon whose land the services called for in this agreement are to be performed.

SUBCONTRACTING -- The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agent.

INDEMNITY --- Contractor shall hold harmless and indemnify the State of Washington, State Parks, its officers, employees, successors and assigns against any and all damages and/or losses arising out of Contractor's use of, or presence or activity in, the facilities, including those arising out of the use or operation of equipment or facilities or as a result of the conduct of Contractor's programs, or from the conduct of Contractor's employees or agents, or damages or vandalism to facilities by third parties, contracted or participating in Contractor's programs, events or activities.

LIABILITY INSURANCE --- Contractor shall obtain and keep in force during the term of this Agreement, a combined single limit bodily injury and property damage insurance policy in the minimum amount of \$1,000,000 naming State Parks as an additional insured against any liability arising out of Contractor's or its agents, employees, or assigns. Contractor shall provide to State

Parks, a certificate evidencing such insurance coverage and shall provide 30 days written notice prior to any changes in the amount of cancellation of said policy.

CONFLICT OF INTEREST -- The Agency may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the Agent that there is a violation of, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

NONASSIGNABILITY -- Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

RECORDS, DOCUMENTS AND REPORTS -- The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable time to inspection, review or audit by personnel duly authorized by the Agency, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation or contract. The Contractor will retain all books, records, documents and other materials relevant to this contract for six (6) years after settlement, and make them available for inspection by persons authorized under this provision.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable time, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

INDUSTRIAL INSURANCE COVERAGE --- Contractor shall provide or purchase industrial insurance coverage for themselves their employees prior to performing work under this Agreement. State Parks will not be responsible for payment of industrial premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this agreement. Contractor, its employees and agents performing under this contract, are not employees of State Parks.

ADVANCE PAYMENTS PROHIBITED -- No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Agency.

LIMITATION OF AUTHORITY -- Only the Agent shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Agent, the Contractor, and attached to the original contract.

DISPUTES -- Except as otherwise provided in this Contract, when a bona fide dispute arises between the Contractor and Agency and it cannot be resolved through discussion and negotiation, either Party may request a Dispute Resolution Board (DRB). A request for a DRB must be in writing, state the disputed issues, and state the position of the Party requesting the DRB. The non-requesting Party shall provide a response within 7 working days.

If the Parties have not resolved their dispute after exchange of the above described information, each Party, by written notice to the other Party, shall designate a member of the DRB within 7 working days of the date of the non-requesting Party's response to the request for a DRB. The members so chosen shall mutually select a third member. Each Party shall have the opportunity to submit written statements and documentation to the DRB by a date set by the DRB. The DRB shall evaluate the facts, contract terms and applicable statutes and rules and make a determination by majority vote. The DRB shall communicate its decision in writing to the Parties. The decision of the DRB is not binding and shall not be admissible in any succeeding mediation, arbitration, or judicial or quasi-judicial proceeding concerning the dispute or the Contract. The Parties agree the DRB process specified in this clause shall precede any action in a judicial or quasi-judicial tribunal.

TERMINATION FOR DEFAULT -- By written notice, the Agency may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such an event, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract; e.g., cost of the competitive bidding, mailing, advertising, staff time and any attorney fees; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's fault or negligence, the termination shall be deemed to be a Termination for Convenience.

TERMINATION FOR CONVENIENCE -- This Contract may be terminated by the Agency, in its sole discretion, by providing 10 days written notice of intent to terminate to the Contractor.

TERMINATION PROCEDURE -- The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further order or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Complete performance of such part of the work as shall not have been terminated by the Agency.

NOTICE -- All notices required to be given pursuant to this Contract shall be in writing and shall be delivered in person to the Party receiving notice, or by express mail service, or by facsimile transmission (with simultaneous mailing of hard copy), or by certified or registered mail, return receipt requested, postage or charges prepaid, at the address listed in Section 1 and 2 in the purchased service contract attached.

Notice shall be deemed effective as of the delivery date.

GOVERNING LAW -- This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor by execution of this contract acknowledges the jurisdiction of the courts of the state of Washington in this matter.

SEVERABILITY -- If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

END OF GENERAL TERMS AND CONDITIONS